



## COMMUNITY DEVELOPMENT DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236  
Website Address: [www.morgan-hill.ca.gov](http://www.morgan-hill.ca.gov)

### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

MARCH 8, 2011

PRESENT: Moniz, Tanda, Koepp-Baker, Benich

ABSENT: Mueller

LATE: None

STAFF: Senior Planner (SP) Linder, Senior Planner (SP) Tolentino, Senior Civil Engineer (SCE) Creer, and Development Services Technician (DST) Bassett

Vice-chair Moniz called the meeting to order at 7:06 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag. The meeting was then relocated to the DSC and reconvened at 7:17 p.m.

#### **DECLARATION OF POSTING OF AGENDA**

Senior Planner Linder certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Vice-chair Moniz opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

#### **MINUTES:**

**FEBRUARY 8, 2011 COMMISSIONERS KOEPP-BAKER AND TANDA MOTIONED TO APPROVE THE FEBRUARY 8, 2011 MINUTES WITH THE FOLLOWING REVISIONS:**

Chair Mueller called the meeting to order at ~~8:00~~ **7:00** p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

**THE MOTION PASSED (4-0-0-1) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT:  
MUELLER.**

# PLANNING COMMISSION MEETING MINUTES

MARCH 8, 2011

PAGE 2

## ORDERS OF THE DAY

No change.

## PUBLIC HEARINGS:

### 1)USE PERMIT, UP-10-08: E. DUNNE-CVS:

A request for approval of a conditional use permit to allow for the construction of a 14,576 square foot drug store with a drive-through pharmacy to be located at 700 East Dunne Avenue in the CG, General Commercial district.

Tolentino presented her staff report: The new store would essentially function the same as the existing store with three primary differences: 1) It would incorporate a drive-thru, 2) It would be open 24 hours daily, and 3) It would include a “minute clinic” which is a retail health center staffed by nurse practitioners and/or physician assistants.

Benich: Is there some way to improve the landscaping of that corner with the construction of the new building under the site review?

Tolentino: CVS has submitted an extensive landscape plan which will be part of the design review. The three existing trees on the corner will be preserved and there will be additional landscaping.

Tanda: Is there a sketch reflecting the three traffic mitigation measures on Dunne?

Tolentino: Yes, the refuge lane will be installed by modifying the existing median; there will be a pork chop median to prevent illegal cross-through movements to Walgreens; and a bulb-out to prevent motorists from traveling in the bike lane.

Moniz: Is there a way to increase the review to more than annually, maybe quarterly? [Commissioner Moniz expressed a desire to receive reports regarding traffic accidents at Walnut Grove Drive and the new project driveway.]

Tolentino: Staff could present a more frequent update report at the Planning Commission meeting. How often and for how long would you want to see it?

Moniz: Quarterly for the first year. Could you contact the police department?

Creer: Typically, we will contact the state reporting system and they will return accident data in about two weeks’ time, which is quicker than going through our Police Department.

Moniz opened the floor to public comment.

Robert Lyman, representing the applicant, appeared.

Koepp-Baker: I was contacted by a member of the public who was concerned

# **PLANNING COMMISSION MEETING MINUTES**

**MARCH 8, 2011**

**PAGE 3**

about the build-up of debris behind the building, so I would ask that special attention be paid to that.

Tanda: It seems expensive to provide for a drive-thru. Can you comment on the importance of that?

Holly Grzywacz appeared on behalf of CVS: This is a strategic relocation because the current CVS store does not meet the business model. It's a long term growth option, not just for the drive-thru but for the entire store design to improve on their ability to operate.

Moniz: What about the existing CVS space?

Grzywacz: There has been communication with various retailers already and with Morgan Hill's Chamber of Commerce to secure a new tenant lease for the old space.

Moniz closed the floor to public hearing.

**COMMISSIONERS BENICH AND TANDA MOTIONED TO APPROVE THE CONDITIONAL USE PERMIT WITH THE ADDED CONDITION THAT TRAFFIC ACCIDENTS AT WALNUT GROVE DRIVE AND THE NEW PROJECT DRIVEWAY BE REPORTED QUARTERLY FOR THE FIRST YEAR.**

**THE MOTION PASSED (4-0-0-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: MUELLER.**

## **OTHER BUSINESS:**

### **2) PROJECT STATUS REVIEW**

**FOR APPLICATIONS: MC-09-02: E. DUNNE- MENDOZA AND MC-09-05: MONTEREY – LIOU AND EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MC-08-23: E. DUNNE – SOUTH VALLEY DEVELOPERS**

Linder presented her staff report: E. Dunne-Mendoza did not respond to letters sent by staff asking them to appear. We did receive an application from Monterey-Liou at 5:00 pm this evening. We have not received anything from E. Dunne-South Valley Developers but the applicant recently entered into a contract with a group called City Ventures Investment Company, so they are looking for an Exception to Loss of Building Allocations (ELBA) to get an extension of time. Staff does not recommend the ELBA unless the applicant is required to submit fees, an application, and sign a Performance Agreement between the City and the applicant establishing the terms of this agreement.

Koepp-Baker: Would that mean submittal of fees and payment of a performance bond?

**PLANNING COMMISSION MEETING MINUTES**

**MARCH 8, 2011**

**PAGE 4**

Linder: It would just be submittal of application fees. It would probably be hard to find a bonding agent.

Koepp-Baker: And all the parties involved would have to sign the agreement?

Linder: It would have to be ratified by all parties.

Moniz: Has this condition been field tested by another applicant?

Linder: This condition was prompted by City Council at their last meeting.

Benich: I know that the Planning Commission has been giving extensions to projects that have come forward. But I thought that in the past, the Planning Commission has only granted extensions for projects that were in process.

Linder: That is mostly true, but not always.

Benich: If we rescind these allocations, are there other projects that could receive them.

Linder: For the year in question, all applicants that competed were given allocations, so there's no one next in line. The allotments would go back into the pool.

Tanda: I don't recall that any allocations have been rescinded lately, so the action that Council took recently was more severe?

Linder: I believe so. The Performance Agreement required would establish a timeline of dates when items would have to be submitted.

Koepp-Baker: And there would be no refund of fees?

Linder: Correct.

Moniz: So if they missed one deadline, the rest of the dominos would fall?

Linder: I've yet to see the agreement.

Tanda: Are the submittal of fees that we're talking about normally refundable?

Linder: If somebody decides to withdraw an application that has been submitted to the Planning Division, then they are only refunded that portion of fees where time has not been expended.

Moniz: So if they submit their application and pay their fees, they'd have 30 days additional response time.

Koepp-Baker: What day would those fees be due?

Linder: June 30, 2011.

**PLANNING COMMISSION MEETING MINUTES**

**MARCH 8, 2011**

**PAGE 5**

Moniz opened the floor to public comment and called up E. Dunne-Mendoza. No one appeared.

Linder: I have not heard from the applicant directly but understand from the project engineer that they do not wish to proceed.

Bethany Liou appeared on behalf of the Monterey-Liou project and requested more time to allow for an opportunity to study the mixed-use market and indicated a desire to move forward with this project.

Bill McClintock of MH Engineering appeared on behalf of Monterey-Liou: An application was actually submitted last week, but it was rejected. We have resubmitted as of 5:00 pm today with the fees.

Tanda: Terry, what is your position on this?

Linder: I have faith that Mr. McClintock has provided the requested application materials.

Benich: I really don't like that the applicant has waited so long, wasting resources, staff time and Commissioners' time.

Koepp-Baker: But now that they have submitted an application and fees, that shows an intent to move forward.

Linder: It is ultimately up to Council to make the decision. All of the projects requesting extensions are going to be grouped together to be heard by Council at the same time.

Benich: I think that if we could give the project a cursory look prior to the next Council meeting, that would be beneficial.

Moniz reopened the floor to public comment.

Scott Schilling appeared on behalf of E. Dunne-South Valley Developers: The industry has gone through a massive change. Small developers can no longer get financing. We're starting to see things change, but it's a new set of developers. It's a different type of company that can get financing. When SVD closed its doors last June, we knew we had to actively seek buyers. One of our projects went to City Council last week and was given an extension. We would like an extension of time on this project so that we can move forward. We believe that this project meets the established zoning but if there needs to be a general plan amendment, we need more time to accomplish that.

Tanda: Extensions of time on development proposals is very common in the last couple of years. Is this different than the others?

Linder: This project, like the two preceding, is different in that we have yet to see an application submitted for planning approvals.

**PLANNING COMMISSION MEETING MINUTES**  
**MARCH 8, 2011**  
**PAGE 6**

Tanda: Is this similar to the project that went to City Council earlier?

Linder: Yes, however, this project might necessitate a General Plan Amendment, which would take additional time.

Tanda: What action did the Planning Commission take on the W. Dunne-SVD project?

Schilling: It went straight to Council.

John Telfer appeared on behalf of the project: Jim Rowe was able to fast track that project because of extenuating circumstances and a timing constraint due to escrow closing.

Linder: Sometimes we do that if there are timing issues.

Tanda: Who made that recommendation?

Telfer: I believe it was Mayor Tate.

Koepp-Baker: So they set a precedent with that?

Schilling: I don't believe they wanted to set precedent. They felt each project would have to be considered on a case-by-case basis.

Telfer: One thing that I'm not sure that staff is fully aware of is that during the '40s this site was a petroleum distribution site. There was contamination and remediation. When Scott first approached me with the news that he could no longer secure financing, we went out to find potential buyers. One of them did their own Phase 1 and Phase 2 investigation and found discrepancies. It took a lot of time and effort. Scott funded that work and has since received a clean Phase 1 and Phase 2.

Koepp-Baker: So nothing was found?

Schilling: We found the foundation of the old industrial tanks and all that had to be pulled out. That was completed in the fall.

Telfer: Additionally, one of the initial High Speed Rail (HSR) maps showed this project as a potential location for the tracks. That's no longer an issue but it was for awhile. It would be a shame to throw this project back to square one. The current buyer, City Ventures, seems like a perfect match for the project and downtown Morgan Hill. And they do not rely on outside financing.

Phil Kerr of City Ventures appeared to request the extension: We finance everything in house and that puts us in a unique position and makes us ready to move forward. We are eager to do that. We've submitted letters to staff on the redesign.

## **PLANNING COMMISSION MEETING MINUTES**

**MARCH 8, 2011**

**PAGE 7**

Koepp-Baker: What's the comparison of the new project to the old? What would be the stumbling block?

Schilling: If it requires a plan amendment that will take additional time.

Koepp-Baker: What would trigger that?

Schilling: Probably the unit type—going from multi-family to single family and going to a lower density on the site.

Kerr: We spent a lot of time on due diligence analyzing RDCS scoring and zoning. It really comes down to areas of interpretation. We need clarification. But we are eager to hear and move forward.

Telfer: We had several meetings with Jim Rowe. He was going to take it back to staff for their discussion. We have not heard back yet.

Koepp-Baker: I hesitate to dump allocations if there's the potential to see it developed within a short period of time.

Moniz: I'd be interested to hear about the General Plan Amendment. Why would that be so far out?

Linder: Those applications are only received twice a year. Just to go through CEQA would take at least six months, so it would burn considerable time.

Schilling: Could we submit a tentative map concurrent with the General Plan Amendment?

Linder: It could be done, but might be at risk if the General Plan isn't approved.

Moniz closed the public hearing.

Tanda: I favor the extension. My only question is if we would be following Council's recommendations from their latest policy. And did this go to City Council?

Linder: It would go to the next meeting grouped with all the other requests for extension.

Benich: I would be in favor of rescinding the allocations for MC-09-02 and granting the extension for MC-08-23.

Moniz: Would that be a straight extension or fees due by June 30<sup>th</sup>?

Benich: That's a good question.

Linder: It will go before Planning Commission again on April 26<sup>th</sup> and Council on May 18<sup>th</sup>. And it sounds like there are unanswered questions, especially regarding the General Plan Amendment.

**PLANNING COMMISSION MEETING MINUTES**

**MARCH 8, 2011**

**PAGE 8**

Koepp-Baker: The applicant has had two circumstances that were definitely outside their control. If the extension were granted, how soon would you be ready to go?

Kerr: We would be ready right away, depending on what we're asked to submit.

Koepp-Baker: So we should have something to review within the next three weeks. If we were to rescind it would be at least five years before a project would be ready to build.

**COMMISSIONERS TANDA AND BENICH MOTIONED TO RESCIND THE ALLOCATIONS FOR MC-09-02: E. DUNNE-MENDOZA.**

**THE MOTION PASSED(4-0-0-1) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT:  
MUELLER**

**COMMISSIONERS TANDA AND BENICH MOTIONED NOT TO TAKE FURTHER ACTION ON MC-09-05: MONTEREY-LIOU**

**THE MOTION PASSED(4-0-0-1) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT:  
MUELLER**

**COMMISSIONERS TANDA AND KOEPP-BAKER MOTIONED TO APPROVE THE ELBA FOR MC-09-05: E. DUNNE-SVD AND EXTEND THE COMMENCEMENT OF CONSTRUCTION DATE FOR FY 2010/11 AND 2011/12 TO DEC. 30, 2012**

**THE MOTION PASSED(4-0-0-1) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT:  
MUELLER**

**3) APPROVE  
WORK PLAN  
AND SELECT  
SUBCOMMITTEE  
TO REVIEW  
RDCS  
STANDARDS AND  
CRITERIA**

Linder presented her staff report: We have openings for two commissioners and two openings for members of the development community.

Koepp-Baker: I had a phone call from Joe Mueller and he said he would be interested in serving. I think we should approve that.

Linder: There have been a few items identified for review. If there is anything else you would like to add, please let us know. This is just a starting point. We also need direction on recruiting two members from the development community. This needs to be wrapped up by May because of an upcoming action for an extension of the BMR reduction program, so this would help to accommodate that.

Moniz opened the floor to public comment.



**PLANNING COMMISSION MEETING MINUTES**

**MARCH 8, 2011**

**PAGE 9**

Dick Oliver appeared and stated that he would be willing to serve.

Koepp-Baker: Vince Burgos contacted me and said that he would like to serve as well.

Linder: We should also consider people outside this room in order to get new input.

Koepp-Baker: Do we have enough input from outside sources to consider all points of view? Are the meetings open to anybody?

Linder: The meetings are open to the public. They are held weekly. Jim Rowe does want to start with the BMR reduction program so that he can include those in the upcoming development agreements.

Oliver: Last year I had some conflicts, and so Scott Schilling filled in for me. So I would suggest that Scott Schilling be one of the members. We need to look at the points and overall fee structure and maybe cut costs in some places, since Build-It Green, fire sprinklers and other things are now required that will price us out of the market.

Tanda: Let's move through the four recommended items in the staff report.

The commissioners consented to approve a work plan to consider changes to the RDCS standards and criteria.

Two commissioners agreed to be appointed as members: Mueller and Benich. The commissioners consented.

Tanda: Is it a group consensus that gets things changed, or is it based on the commissioners' recommendations?

Koepp-Baker: It is a joint decision and then it comes back to the Planning Commission.

Tanda: Do we try to limit the subcommittee size?

Linder: Yes, but we try to choose enough people that there can be back up if members are absent. We are trying to add two people in addition to the two Planning Commissioners.

Koepp-Baker: It is 5 members that make up the committee: Jim Rowe plus two Commissioners and two Developers, plus staff and backup people.

Tanda: Would it be wise to have an experienced person and maybe a newer person with fresh ideas, as well?

Linder: I believe that's what Jim was recommending.

Moniz: So Joe Mueller and Bob Benich would be commissioners; Dick Oliver, Vince Burgos and Scott Schilling are developers that have expressed an interest in

# **PLANNING COMMISSION MEETING MINUTES**

**MARCH 8, 2011**

**PAGE 10**

serving as representatives on the subcommittee.

Koepp-Baker: Do you have a mass email you could send out letting people know of this possible appointment?

Linder: Yes, and it might be a good idea just for community outreach so that people can listen in.

Moniz: We need to have these recommendations in place by April 26<sup>th</sup>?

Linder: Correct.

Moniz: That concludes Agenda Item No. 3

## **ANNOUNCEMENTS/ COMMISSIONER IDENTIFIED ISSUES**

Tanda: With nothing on the agenda, does this mean that we have the possibility of canceling the April 12<sup>th</sup> meeting?

Linder: Yes.

Benich: Could you give us a list of the planning commission seats that need to be filled?

Linder: I'll have Jim re-send the list.

## **CITY COUNCIL REPORTS**

None.

## **ADJOURNMENT**

Noting that there was no further business for the Planning Commission at this meeting, Vice-chair Moniz adjourned the meeting at 8:50 p.m.

## **MINUTES RECORDED AND TRANSCRIBED BY:**

---

**ELIZABETH BASSETT, Development Services Technician**